

INSIGHTS

Reeves County District Court Rules in Favor of Oil & Gas Operator in Produced Water Dispute

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On November 2, 2021, the Reeves County, Texas, District Court held in COG Operating LLC (“COG”) vs. Cactus Water Services, LLC *et al.* (“Cactus”) that COG, the oil & gas operator, (1) owns, among other things, the products contained in commercial oil and gas bearing formations that are produced from the COG wells on four leases, and (2) has the right to exclusive possession, custody, control and disposition of the product stream, which stream includes water produced from COG’s oil and gas wells.

The parties did not dispute that COG owns the subject oil and gas leasehold rights in approximately 37,000 acres in the Delaware Basin via four leases (the “COG Oil & Gas Leases”). An example of a lease granting clause at issue in the COG Oil & Gas Leases provides for a grant to COG for the purpose of “investigating, exploring, prospecting, drilling, mining and operating for oil and gas and other hydrocarbons” and for “laying pipelines... and building tanks, power stations and other structures thereon, to produce, save, take care of, store and treat products produced hereunder, and then transport those products from the land.”

Subsequent to COG’s entry into the COG Oil & Gas Leases, Cactus entered into “Produced Water Lease Agreements” with various surface owners purporting to transfer property rights in the water produced from the subject COG operated wells to Cactus. After Cactus made demands on COG and certain of COG’s service providers in accordance with Cactus’s purported rights, COG filed the lawsuit referenced above. On November 2, 2021, the Reeves County District Court ruled in favor of COG and affirmed COG’s ownership rights in the subject produced water.

While the Texas Legislature attempted to address produced water ownership issues in 2019 with the passage of HB 3246, the statute remains qualified by what the contracting parties agree to in the underlying contract. Therefore, careful attention should be given to the language in each negotiated agreement when determining ownership rights, including with respect to produced water.